

SUMMARY

In the Office Action dated October 30, 2008, claims 4, 5, 7-20, 36-39, and 41-46 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite, claims 4, 5, 7, 8, 12-15, 36-39, 41-42, and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown* (US 5,350,109) in view of *Wilson* (US 5,072,876) and either *Sutherland* (US 6,112,977) or *Skolik* (US 6,170,741), claims 36-39 and 41-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown* in view of *Wilson* and *JP '243* (Japan 47-7243), claims 9 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art applied to claims 8 and 15, respectively above, and further in view of *Sherman* (US 3,116,229), claim 43 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claim 42 in either paragraph 3 or 4 above (referencing October 30, 2008 Office Action) and further in view of *Sherman*, claims 10-11 and 17-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claims 9 and 16, and further in view of *Gilchrist* (US 3,533,549), and claims 44 and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claim 43 above, and further in view of *Gilchrist*. Upon entry of this Amendment, claims 4, 5, and 36 will have been amended and claims 4, 5, 7-20, 36-39, and 41-46 will be pending in this application.

Response to Rejections Under 35 U.S.C. § 112:

Claims 4, 5, 7-20, 36-39, and 41-46 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Although Applicant traverses the rejection of these claims as indefinite, to advance prosecution, the claims have been amended to address all purported indefiniteness.

Response to Rejections Under 35 U.S.C. § 103:

Claims 4, 5, 7, 8, 12-15, 36-39, 41-42, and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown* (US 5,350,109) in view of *Wilson* (US 5,072,876) and either *Sutherland* (US 6,112,977) or *Skolik* (US 6,170,741), claims 36-39 and 41-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Brown* in view of *Wilson* and *JP '243* (Japan 47-7243), claims 9 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art applied to claims 8 and 15, respectively above, and further in view of *Sherman* (US 3,116,229), claim 43 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claim 42 in either paragraph 3 or 4 above (referencing October 30, 2008 Office Action) and further in view of *Sherman*, claims 10-11 and 17-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claims 9 and 16, and further in view of *Gilchrist* (US 3,533,549), and claims 44 and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claim 43 above, and further in view of *Gilchrist*. Applicant traverses these rejections.

The Cited Art Cannot Be Combined As Proposed:

Brown provides, as detailed in his Abstract, a two layer paperboard carton with “an incipient handhold that is adapted to partially break away from surrounding portions of a carton wall, and to sequentially collapse in a predetermined reverse folding or “concertina” fashion, to provide a folded load-bearing handhold structure.” *Brown* provides exterior and interior flaps that are “arranged in mutually co-operable register with the respective interior layer and exterior layer score lines positioned parallel and adjacent to one another in cooperative lower hinge-forming relation.” However, *Brown* fails to provide a reinforcing insert as claimed, especially an

insert with score lines arranged in cooperation with corresponding score lines in the interior and exterior layers which would be required to allow the handholds to collapse as intended by *Brown*. None of the reinforcing inserts or flaps of *Wilson*, *Sutherland*, *Skolik*, *JP '243*, *Sherman*, or *Gilchrist* provide score lines therein, especially score lines in registration with inner and outer carton layer score lines as would be required to use such an insert in the carton of *Brown*. Absent a teaching or suggestion to provide score lines in the insert or otherwise modify the carton handholds of *Brown*, the modification of *Brown* proposed by the Examiner would not function as proposed. Specifically, the handholds of *Brown* would not collapse without score lines corresponding to the score lines in the inner and outer carton layers being included in the reinforcing insert of *Brown*. Thus, since the combinations proposed by the Examiner would render the prior art (*Brown*) unsatisfactory for its intended purpose (providing a breakaway handhold), Applicant avers that the proposed combinations could not be made as proposed. (See MPEP 2143.01(v)).

Even If The References Were Somehow Combined, The Resulting Combination(s) Would Fail To Provide All Claimed Elements:

If somehow the combinations could be made as proposed, the resulting combinations would fail to teach each and every element of the claims as amended. The independent claims have been amended to provide three layers of paperboard between the first top fold line and the first handle aperture. If the combinations as proposed by the Examiner were somehow made, none of the resulting combinations would provide three layers of paperboard between the first top fold line and the first handle aperture as claimed. At best, only two layers of paperboard would be provided between the first top fold line and the first handle aperture. For example, *Wilson* provides side panel end flaps that fold to the side of the handle aperture and that do not extend

between the first top fold line and first handle aperture (see FIG. 3). The handle openings in *Sutherland, Skolik, JP '243*, and *Gilchrist* fail to teach the claimed arrangement in at least two manners since they (1) are only in the panels and not in the end flaps as claimed and (2) comprise only two layers, not three as claimed. Accordingly, the amended claims provide elements not taught or suggested by the cited art and rejections based thereupon should be withdrawn.

The dependent claims are allowable on their own merit as including elements not shown or disclosed in the prior art, and are allowable as inheriting the allowable characteristics of the independent claims from which they depend.

CONCLUSION

Applicant respectfully asserts that all claims are in condition for allowance and requests that a Notice of Allowance be issued. If issues may be resolved through Examiner's Amendment, a call to the undersigned attorney is courteously solicited.

The Commissioner is authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 09-0528.

Respectfully submitted,

1/20/09
Date

Customer No. 26158
Womble Carlyle Sandridge & Rice, PLLC
P.O. Box 7037
Atlanta, Georgia 30357-0037
Telephone: (404) 879-2423
Facsimile: (404) 879-2923
Docket No. R029 1410.3

Keats A. Quinalty
Keats A. Quinalty
Registration No. 46,426
Attorney for Applicant